

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.4064 OF 2005

Prabhakar Krishnaji Lele).. Petitioner

Versus

Vijay Madhav Kher).. Respondent

Mr.M.C.Dixit for the Petitioner.

Mr.A.L.Patki for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 27TH JUNE 2005

P.C.:

. This Petition has been filed challenging two concurrent orders of the Courts below. The finding of the Courts below is that the Petitioner has acquired suitable accommodation and, therefore, the suit has been decreed under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947. Reliance is placed by the learned Advocate for the Petitioner on the judgments in the case of *Prabhakar Raghunath Dixit vs. B.S.Kothare*, 1973 The Bombay Law Reporter (Vol.LXXVI) 240, and *Soni Jagjivan Narsi vs. Manchhaben Odhavji*, 1975 Gujarat Law Reporter (Vol.XVI) 991 in support of his submission that the premises acquired by the Petitioner are in addition to the existing place of residence and not necessarily "suitable".

2. There is a finding of fact recorded by both the Courts below that the Petitioner has been allotted a plot by the Gram Panchayat and he has constructed thereon a three room house. The Petitioner, his wife and two minor sons were occupying the suit premises when the Suit was filed. The Petitioner had raised a defence that he had school going children who would be required to travel a long distance to school if he shifted to his own accommodation. Today, the children are majors and, therefore, the Petitioner now seeks to change his stand by saying that his growing family requires both the premises. In my view, the concurrent findings of fact recorded by the Courts below need not be disturbed. There is no dispute that the Petitioner has acquired other reasonable accommodation which is habitable. Petition dismissed.

3. The Petitioner seeks liberty to vacate the premises by 31st December 2005. Liberty granted upto 31st October 2005 on condition that the Petitioner and all the adult members in the family file the usual undertaking in this Court within two weeks from today.